

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ADOLFO SERRANO, §
SPN 00127152,, §
Plaintiff, §
v. § CIVIL ACTION NO. H-12-0786
§
FORT BEND COUNTY JAIL, §
§
Defendant. §

MEMORANDUM AND ORDER OF DISMISSAL

While a detainee in the Fort Bend County Jail, plaintiff filed a civil rights suit pursuant to 42 U.S.C. § 1983, in which he complained that he had been denied access to a law library in the Jail. (Docket Entry No.1). Plaintiff has also filed a motion to proceed *in forma pauperis*, which the Court will grant. (Docket Entry No.2).

Discussion

Under the Prison Litigation Reform Act, inmates must exhaust "such administrative remedies as are available" prior to bringing a civil action. 42 U.S.C. § 1997e(a). Failure to exhaust is an affirmative defense, and "inmates are not required to specifically plead or demonstrate exhaustion in their complaints." Jones v. Bock, 549 U.S. 199, 216 (2007). Dismissal may be appropriate, however, when, on its face the complaint establishes the inmate's failure to exhaust. See Carbe v. Lappin, 492 F.3d 325, 328 (5th Cir. 2007).

The Fort Bend County Jail has a two-step formal grievance process by which an inmate may complain about the violation of his

civil rights. See Long v. Boehnemann, Civil Action No.H-05-3789, 2006 WL 2935200 (S.D. Tex. Oct. 12, 2006). Plaintiff indicates that he has not exhausted either step of this process. (Docket Entry No.1). Therefore, his complaint is subject to dismissal for failure to exhaust his administrative remedies.

Conclusion

Accordingly, the Court ORDERS the following:

1. Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(b) is GRANTED. Plaintiff shall pay the entire \$350.00 filing fee under 28 U.S.C. § 1915(b). The Officer in charge of the inmate's trust fund account in the Fort Bend County Jail and Sheriff's Department shall deduct twenty per cent (20%) of each deposit made to plaintiff's trust fund account when the account exceeds \$10.00, and forward the funds to the Clerk on a regular basis in compliance with the provisions of 28 U.S.C. § 1915(b) until the fee has been paid.
2. Plaintiff's complaint is DISMISSED without prejudice for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). All claims against all defendants are DENIED.
3. All other pending motions, if any, are DENIED.

The Clerk will provide a copy of this Order by facsimile transmission, regular mail, or e-mail to the parties and to the Officer in charge of the inmate's trust fund account at the Fort Bend County Jail and Sheriff's Department, 1404 Ransom Rd., Richmond, Texas 77469.

SIGNED at Houston, Texas, on

May 18, 2012.
Ewing Werlein, Jr.
EWIN WERLEIN, JR.
UNITED STATES DISTRICT JUDGE